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Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

July 17, 2008

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1286 Amendment of Regulation Z, which implements the Truth in Lending Act (TILA).

Dear Ms. Johnson:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on proposed amendments to the rules of Regulation Z of the Truth in Lending Act (TILA). The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to formulating informational and educational outreach programs and initiating policy development. Currently, the CPB is developing comprehensive outreach programs on issues such as identify theft, Internet safety, financial literacy, and credit card management. Our Consumer Assistance Unit (CAU) which takes complaints five days a week, 8:30 a.m. to 4:30 p.m., via our toll-free helpline at 1-800-697-1220 and twenty-four hours a day, seven days a week via the web at www.nysconsumer.gov, responds to and resolves over 20,000 complaints and inquiries a year on a variety of topics including banking fees, credit card disputes, identity theft, and product refunds and returns.

In the past year, the Agency received over 1,660 credit-card related complaints and inquiries. The nature of these complaints included billing disputes and erroneous charges, exorbitant fees, changes in interest rates, and late payment fees. We have successfully mediated, resolved, and satisfied over 1,327 of these complaints.

We commend the Federal Reserve Board's (Board) continuing efforts to improve credit card disclosures. Together with the proposal to prohibit specific unfair acts and practices under the Federal Trade Commission (FTC) Act, key credit card terms will become more transparent and some types of abusive credit card practices will be curtailed. We set forth our specific comments, some of which have been detailed in our previous comments, below.

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Grace Period

In its proposal, the Board suggests eliminating the term “grace period” from its required disclosures, in favor of inserting terminology similar to “how to avoid interest” or “paying interest.” While the CPB concedes that there may be a better descriptive term than “grace period” to denote the time a consumer has to repay the bill without incurring interest, the Board has not suggested that creditors use identical language, which would create uniformity. The CPB asserts that creditors should be required to use a clear and uniform term; otherwise, consumers will be confused and less able to accurately compare the terms of varying credit offers. Until the Board settles on a uniform term or phrase to replace the term “grace period”, this well-established term should continue to be used on application and solicitation disclosures.

Minimum Interest Charges

The Board proposes to require disclosure of minimum finance charges in the summary tables at account opening or application only when the sum is at least \$1.00 (to be adjusted periodically to the Consumer Price Index). If the fee is important enough for credit issuers to charge it, then it is important enough to disclose to consumers. Hence, the CPB opposes the elimination of the disclosure requirement. Minimum finance charges are a necessary component of the APR. Without this information, a consumer cannot accurately ascertain the true cost of credit.

Foreign Transaction Fees

The Board’s proposal would require issuers to disclose fees for purchase transactions in a foreign currency or otherwise conducted outside of the United States in the table provided with applications or solicitations. Currently, such disclosure is only required at account opening. This proposal is a good one; foreign transaction fees can be significant for those consumers who travel abroad, and those consumers may shop for credit on that factor alone.

Penalty Rate When Credit Privileges Are Terminated

Currently, card issuers are not required to disclose in the application summary table the rates which apply when credit privileges are terminated. The Board’s current proposal would eliminate that exception.

The CPB supports the elimination of the penalty rate exception. Consumers should know upfront what the penalty rates will be if the creditor chooses to terminate credit privileges.



Account Opening Disclosures

This proposal would require creditors assessing fees totaling 25% or more than the minimum credit limit to provide notice to the consumer that he or she has the right to reject the plan if the consumer has not used the account or made a payment. The Board also proposes to clarify that a consumer has not used the account or paid a fee if he or she merely activates a card for security purposes.¹ In addition, in the context of oral applications or solicitations initiated by the credit issuer involving such high fee cards, the creditor is required to orally disclose the amount of available credit that an applicant would have after paying for the fees or security deposit, assuming the consumer obtains the minimum credit limit.

The CPB supports these proposals. So called "fee harvester cards" are often foisted upon the consumer without the opportunity for the consumer to understand the account's onerous provisions. Once the consumer receives the card (and its attendant fees), the consumer often believes that it is too late to cancel the card.

However, the CPB has two concerns with these proposals, both of which we expressed in the comments we submitted in October 2007. First, the threshold for the disclosures requirement should be lowered from 25% to 10%, as these subprime cards typically have extremely low credit limits, and even 10% represents a significant reduction in purchasing power. Second, any oral representation as to the amount of available credit should be followed up in writing. Oral disclosures can be confusing or easily misunderstood, particularly for a consumer who speaks English as a second language. By requiring subsequent written disclosure, the consumer will have the opportunity to fully comprehend the disclosures.

Due Dates for Mailed Payments

The Board's proposal provides that mailed payments received by 5 p.m. on the due date must be considered timely. If the creditor does not receive or accept mailed payments on the due date (for instance if the due date falls on a Sunday or holiday), a payment received the next business day must be considered timely.

The CPB supports these amendments to the rules. Too often, consumers are charged exorbitant late fees for payments which actually are received on the due date during normal business hours. Creditors will also set due dates on Sundays or holidays, forcing consumers to send their payment in earlier or face a hefty penalty. The Board's

¹ i.e., when a consumer activates a card he or she receives in the mail so as to prevent the card from falling into the wrong hands.

proposal will help curb these abusive and unfair practices and create some certainty for consumers.

Advertising Provisions

The Board proposes to require advertisements promoting deferred interest offers to state the date by which the consumer must pay the balance or transaction in full to avoid finance charges "in a prominent location closely proximate to the first statement of 'no interest,' 'no payments,' or 'deferred interest'..." (Proposed § 226.16(h).) The advertisement must also disclose the consequences of not paying off the balance before the deferred interest period ends or the account is in default. (*Id.*)

The CPB supports this proposal. By requiring such disclosures, consumers will understand the consequences of failing to pay off their balance before the deferred interest period ends, and consequently make more informed choices.

In conclusion, most of these proposals, in connection with the proposals to further regulate credit card practices under Regulation AA of the FTC Act, will prove beneficial to consumers. However, the Board *can* and *should* do more to protect consumers from the abusive, predatory, and unfair practices of credit card issuers, particularly as they relate to account opening disclosures, foreign transaction fees, and minimum interest charges.

Thank you for your consideration of our comments.

Sincerely,



Mindy A. Bockstein
Chairperson and Executive Director

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